A

Lakshminarayanan v Marimuthu

HIGH COURT (ALOR SETAR) — CIVIL SUIT NO 443 OF 1984
KC VOHRAH J
14 FEBRUARY 1993

B

Civil Procedure *— Contempt of court — Breach of terms of court order — Fine paid after time fixed by court — Whether court would allow a warrant of committal to be executed*

C

This is an application by the plaintiff for the warrant of committal issued against the defendant to be executed on the ground that though the defendant had surrendered the key to her premises to the plaintiff and had paid the fine in compliance with the committal order, she had failed to pay the fine within the time specified by the court in the order.

D

Held, dismissing the application:

(1) It is not unusual for the court to fine contemnors but it is unusual to impose a term of imprisonment in default of the payment of the fine. In any event, the imprisonment in default of a fine is not punishment under the provisions of the Criminal Procedure Code (FMS Cap 6).

E

(2) Viewing all the circumstances of the case, it would not be justified to allow the warrant of committal to be executed against the defendant merely to rigidly enforce a stipulation in the order that she had to pay by a certain date, when the date had come and gone but otherwise the contempt had been purged.

F

Per curiam:

A person who has committed a civil contempt may be subject to the rule that the court will not hear an appeal or other application in the proceedings by a person disobeying an order of the court until he has purged his contempt.

G

[Bahasa Malaysia summary

Ini merupakan suatu permohonan oleh plaintif supaya suatu waran komital dikeluarkan terhadap defendan atas alasan bahawa walaupun defendan telah menyerahkan kunci premisnya kepada plaintif dan telah membayar denda mematuhi perintah komital itu, beliau telah gagal membayar denda dalam tempoh masa yang ditetapkan oleh mahkamah di dalam perintah itu.

H

I

Diputuskan, menolak permohonan itu:

(1) Adalah menjadi kebiasaan untuk mahkamah mendenda seseorang penghina mahkamah tetapi tidak menjadi kebiasaan untuk suatu tempoh pemenjaraan diarahkan apabila denda itu tidak dibayar. Bagaimanapun, pemenjaraan disebabkan ketiadaan bayaran denda

tidak boleh dihukum di bawah peruntukan Kanun Acara Jenayah (FMS Bab 6).

(2) Memandangkan kesemua keadaan kes ini, waran komital itu tidak patut dibuat terhadap defendan hanya kerana hendak menguatkuasakan secara tegar suatu stipulasi di dalam perintah itu yang menyatakan bahawa defendan mesti membayar denda itu pada suatu tarikh yang ditetapkan, apabila tarikh itu telah datang dan pergi tetapi selain daripada itu, penghinaan mahkamah itu telah dibersihkan.

Per curiam:
Seseorang yang telah melakukan suatu penghinaan sivil mungkin tertakluk kepada kaedah bahawa mahkamah tidak akan mendengar suatu rayuan atau permohonan dalam prosiding oleh seseorang yang telah mengingkari suatu perintah mahkamah sehingga beliau membersihkan penghinaan itu.]

Notes
For cases on contempt of court, see 2 *Mallal's Digest* (4th Ed) para 554–585.

Cases referred to
1 *Corcoran v Corcoran* [1950] 1 All ER 495 (distd)
2 *Hadkinson v Hadkinson* [1952] 2 All ER 567 (refd)
3 *Phonographic Performance Ltd v Amusement Caterers (Peckman) Ltd* [1963] 3 All ER 493 (refd)
4 *Re W(B) (an infant)* [1969] 1 All ER 594 (refd)

Legislation referred to
Rules of the High Court 1980 O 53 r 6(2)

SP Annamalai (*Annamalai & Co*) for the plaintiff.
Francis V Nathar (*Francis Nathar & Co*) for the defendant.

Cur Adv Vult

KC Vohrah J: At the restored hearing of the notice of motion in respect of contempt proceedings against the defendant, the plaintiff applied for the warrant of committal issued against the defendant to be executed on the ground that though the defendant had surrendered the key to her premises to the plaintiff and had paid the fine in compliance with the committal order made by Lim Beng Choon J, she had failed to pay the fine within the time specified by him in the order.

Contempt proceedings were taken by AR Jayaram against the defendant in 1988 for breach of a court order made in 1985.

The proceedings were taken for an order that the defendant 'be committed to prison for her contempt of this court in breach and disobedience of the order of court dated 3 July 1985, to wit, in failing and/or neglecting to deliver up possession of the premises known as No 3, Lorong Ganding

A (previously known as No 3, Kampong Shanmugam), Jalan Langgar, Alor Setar within two weeks from the date of the order and therefore disallowing the plaintiff to be reinstated as the lawful tenant of the said premises and in disturbing and interfering with the plaintiff's quiet and peaceful occupation of the said premises.'

B On 2 April 1988, Lim J at the hearing of the notice of motion (encl 40) found the defendant guilty of contempt of court and ordered her to be fined a sum of RM2,000 for her contempt 'until she purges her contempt' and further ordered that the fine be paid within one month from the date the order was made and in default thereof the defendant was to be imprisoned for two weeks.

C The relevant portion of the order reads as follow:

> And it appearing to the satisfaction of the court that the defendant, G Marimuthu d/o Govindasamy has been guilty of contempt of court in disobeying the order of court dated 3 July 1985.
>
> It is ordered that for her said contempt the defendant, G Marimuthu d/o
> D Govindasamy be and is hereby fined a sum of RM2,000 until the defendant purges her contempt and it is further ordered that the aforesaid fine is to be paid within one (1) month from date hereof and in default thereof the defendant is to be committed to the Alor Setar prison to be there imprisoned for a period of two (2) weeks ...

E In his grounds of decision dated 3 August 1988, Lim J stated that it was his considered opinion that in refusing to hand over the keys of the premises, the defendant had clearly failed to comply with the terms of the order of the court to deliver possession of the premises to the plaintiff, to reinstate the plaintiff as a monthly tenant and to allow the plaintiff to have quiet occupation of the premises.

F As early as 21 June 1988, the plaintiff's solicitors wrote to the court and requested for the hearing of the notice of motion (encl 40) to be restored for further hearing on the ground that the defendant had not purged her contempt. By 21 June 1988, the defendant had sent to the plaintiff the key to her premises (it was sent on 13 April 1988) but she had not paid her fine as ordered; it was only on 22 April 1989 that she paid the fine of RM2,000.

G Enclosure 40 was duly restored for further hearing. On 25 April 1989, a warrant for the committal of the defendant to prison was filed in the High Court by the plaintiff in the following terms:

> Whereas by an order of this court pronounced on 2 April 1988 it was ordered that the abovenamed G Marimuthu do pay a fine of RM2,000 for her contempt
> H of court in disobeying the order of court dated 3 July 1985 until she purges her contempt in default whereof within (1) one month the said G Marimuthu was ordered to be committed to the Alor Setar prison to be there imprisoned for a period of (2) two weeks.
>
> These are therefore to command you the sheriff and every police officer to apprehend the said G Marimuthu and her safely convey to the Alor Setar prison
> I there to be detained and kept in safe custody for (2) two weeks and thereafter until she purges her contempt or until further order of this Honourable court.

In the meantime, AR Jayaram passed away and on 19 August 1989, AJ Lakshminarayanan was substituted as the plaintiff.

At the hearing of the said notice of motion, counsel for the plaintiff submitted that the defendant should be committed to prison on the warrant that had been filed, as she had not paid the fine of RM2,000 within the time frame ordered by Lim J. Counsel for the plaintiff relied on *Corcoran v Corcoran*[1] to say that the only ground on which the defendant could be freed was that she had complied with the order of Lim J to pay the fine within the time frame given her. With respect, I do not agree that that is what the case says. What it says is that the court is not justified in discharging a person who continues to disobey its order. True, the defendant did not pay the fine in time but, more importantly, consideration has to be given to the fact that the fine has been paid. In *Corcoran v Corcoran*[1] there was no attempt on the part of the contemnor to purge his contempt. Counsel also argued that the order of Lim J had to be obeyed until it was discharged, citing *Hadkinson v Hadkinson*[2] as authority. I will be adverting to this case later but suffice it to say for the moment that the case establishes that a person who has committed a civil contempt may be subject to the rule that the court will not hear an appeal or other application in the proceedings by a person disobeying an order of the court until he has purged his contempt. Counsel also argued that it was for the defendant who was cited for contempt to initiate action to discharge or set aside the order for committal and requested that the defendant be directed to make the necessary application to discharge the order of suspended sentence made by Lim J but I can hear the defendant on the basis of *Hadkinson v Hadkinson*[2] and I will come to it later.

Counsel for the defendant argued that the defendant had purged her contempt when she sent the key of the premises to the plaintiff and that the matter of the fine ordered by Lim J to be paid within a certain time frame was a separate issue for contempt proceedings and that the plaintiff had to start fresh proceedings for contempt in regard to the matter of the fine. I do not agree as the payment of the fine within a certain time frame is an integral part of the order of Lim J and the court has to consider whether the warrant should be executed for the failure to pay the fine within the time frame stipulated in the said order.

Before I go further, I think the committal order has to be looked into. There are three aspects in the committal order in relation to the fine imposed by Lim J on 2 April 1988:

(1) that the defendant was fined RM2,000;
(2) that she was so fined 'until the defendant purges her contempt'; and
(3) that the fine had to be paid within one month from the date of the order in default whereof the defendant was to be committed to prison for two weeks.

The reference to the defendant purging her contempt in para 2 above must mean, in the context of her failure to deliver possession of the premises, that she had to surrender possession of her premises to the plaintiff and according to Lim J (in his grounds of decision adverted to earlier) it meant she had to hand over the keys of the premises to the plaintiff. This, it is not disputed, she has done.

As regards the other two aspects of the order, it seems to me that the term in the order made by Lim J that the defendant is 'to be committed to the Alor Setar prison to be there imprisoned for two weeks' in default of

payment of the fine within one month of the date of order, must be understood to mean that the order committing the defendant to two weeks imprisonment is suspended on condition that the defendant pays the fine of RM2,000 within two weeks from the date of the said order.

It is now not unusual for the court to fine contemnors (see *Phonographic Performance Ltd v Amusement Caterers (Peckman) Ltd*[3] which said that the court has, in the case of a civil contempt, power to impose the lesser penalty of a fine) but it is unusual to impose a term of imprisonment in default of the payment of the fine. In any event, the imprisonment in default of a fine is not punishment under the provisions of the criminal procedure. In my view, it was a suspended committal order that was probably made under O 53 r 6(1) of the Rules of the High Court 1980, bearing in mind that counsel for the defendant in mitigation before Lim J (this was pointed out by counsel for the plaintiff) pleaded for the committal order to be suspended (see p 6 of notes of proceedings) and bearing in mind also that there was another condition that the defendant 'purges her contempt' (meaning that she had to surrender the key to her premises to the plaintiff) which had to be satisfied. If these two conditions had not been included in the order of Lim J, there would have been a straight term of two weeks' imprisonment for contempt and she would have been sent to prison on the day the order was made.

Under O 53 r 6(1), the court by whom an order of committal is made, may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify. And under para 2 of r 6, where 'execution of an order of committal is suspended by an order under paragraph (1) the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.' I have gone through the notes of proceedings made by Lim J and nowhere in the context of para (2), is there a direction otherwise as regards service of the notice on the defendant. The court records show that the order made by Lim J was extracted only on 15 September 1989 but it must be pointed out that I am satisfied that the plaintiff's solicitor did forward the draft order to the court on 13 July 1988. Whatever it is, it is quite clear that the terms of the order were not settled before the expiry of the one month period given to the defendant to settle the fine and that she had not been served with the notice required to be served on her under O 53 r 6(2). And I would be inclined to go no further on the warrant.

Assuming that the non-service of the notice on the defendant is a mere irregularity and therefore curable, the facts show that the defendant has complied with the greater part of the committal order. She has paid her fine of RM2,000. More importantly, she has handed the key to the premises to the plaintiff. The gravamen of the contempt proceedings was that she neglected to deliver possession to the plaintiff and Lim J had held, as stated earlier, that in refusing to hand over the keys of the premises, the defendant had clearly failed to comply with the terms of the order to deliver possession of the premises to the plaintiff. In paying the fine and delivering the key, the defendant has complied with the order of Lim J save that she did not pay

the fine on time. Should she go to prison for paying the fine late? It is pertinent to bear in mind what Denning MR said in *Re W(B) (an infant)*:[4]

> The case raises a difficult point of law. When it was first heard, it was by two judges who were divided on it. Now it comes before this court of three. We are all of opinion that Megarry J had a discretion on the matter. The sentence of six months did not come into operation at once and automatically on a breach being proved. The court has a discretion analogous to a suspended sentence in the criminal courts. Imprisonment is not the inevitable consequence of a breach. The court has a discretion to do what is just in all the circumstances. It can reduce the length of the sentence or can impose a fine instead. It may indeed not punish at all. It all depends on how serious is the breach, how long the man has behaved himself, and so forth.

Viewing all the circumstances of the case, I do not think I would be justified in allowing the warrant of committal to be executed against the defendant merely to rigidly enforce a stipulation in the order that she had to pay by a certain date, a date which has come and gone. In my view she should not go to prison.

So far, I have gone on the basis that the order of committal was made probably under O 53 r 6. Even if it was not a suspended committal order, I think I would be justified to intervene and hear what the defendant has to say although prima facie she should not be heard because she disobeyed the order of Lim J. But Denning LJ in *Hadkinson v Hadkinson*,[2] referred to earlier, was of the view the court has a discretion in the following terms at p 575:

> ..., I am of opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.

Counsel for the defendant argued that the defendant has complied with the order of Lim J. I think what he is saying is that at the moment, there is no more disobedience; it is not a continuing disobedience, as, the date by which the fine had to be paid has come and gone and the fine has indeed been paid and the key indeed surrendered. In other words, the order of Lim J has substantially been complied with and as I have said earlier, I would not be justified in allowing the warrant of committal to be executed against the defendant, merely to rigidly enforce a stipulation in an order as a date by which a fine has to be made when the date has come and gone but otherwise the contempt has been purged.

In the premises, I rule that the warrant need not be executed.

Order accordingly.

Reported by K Pasupathy